

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**CHARLES SANDERS,**

**Plaintiff,**

**v.**

**9:07-CV-298  
(FJS/GJD)**

**L. BENWARE, Correction Officer, Riverview  
Correctional Facility,**

**Defendant.**

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**APPEARANCES**

**CHARLES SANDERS**

**02-A-1399**

Riverview Correctional Facility

P.O. Box 158

Ogdensburg, New York 13669

Plaintiff *pro se*

**SCULLIN, Senior Judge**

**ORDER**

Currently before the Court is Plaintiff Charles Sanders' amended complaint, *see* Dkt. No. 5, which he submitted in compliance with this Court's March 27, 2007 Memorandum-Decision and Order, *see* Dkt. No. 4.

In that previous Order, the Court advised Plaintiff that he must allege facts sufficient to support a claim that Defendant Benware was deliberately indifferent to his safety. *See id.* at 4. The Court also dismissed the New York State Department of Correctional Services as a Defendant in this action. *See id.* at 3.

In his amended complaint, Plaintiff alleges that Defendant Benware was deliberately

indifferent to his safety when he left his post to smoke a cigarette, thereby leaving the housing unit unsupervised. *See* Dkt. No. 5 at 2. Plaintiff claims that, as a result of Defendant Benware's decision to leave his post, thereby leaving the inmates in his care unsupervised, a fellow inmate attacked Plaintiff and that, as a result of this attack, he suffered permanent injuries to his face, head and eyes. *See id.* Since Plaintiff's amended complaint substantially cures the defects in his original complaint, the Court accepts it for filing.

Accordingly, based upon the foregoing, the Court hereby

**ORDERS** that the Clerk of the Court shall issue a summons and forward it, along with a copy of the amended complaint, to the United States Marshal for service upon Defendant Benware, together with a copy of this Order.<sup>1</sup> The Clerk of the Court shall also forward a copy of the summons and amended complaint by mail to the Office of the New York State Attorney General, together with a copy of this Order; and the Court further

**ORDERS** that Defendant or his counsel shall file a formal response to Plaintiff's amended complaint as provided for in Rule 12 of the Federal Rules of Civil Procedure after service of process on Defendant; and the Court further

**ORDERS** that the parties to this action shall file all pleadings, motions and other documents relating to this action with the Clerk of the United States District Court, Northern District of New York, James Hanley Federal Building and Courthouse, 7th Floor, 100 South Clinton Street, Syracuse, New York 13261-7367. **A party must accompany any paper that it sends to the Court or to the Clerk of the Court with a certificate showing that the party has**

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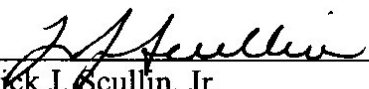
<sup>1</sup> In its previous Order, the Court granted Plaintiff leave to proceed with this action *in forma pauperis*. *See* Dkt. No. 4.

**mailed a true and correct copy of the same to all opposing parties or their counsel. The Clerk of the Court will return, without processing, any document that the Court or the Clerk of the Court receives which does not include a proper certificate of service.** Plaintiff must comply with any requests of the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with this District's Local Rule 7.1 in filing motions, which must be returnable before the assigned magistrate judge with proper notice as the Rules require. **Plaintiff is also required to notify the Clerk's Office and all parties or their counsel of any change in his address promptly; his failure to do so will result in the dismissal of this action.** The Court will decide all motions on submitted papers without oral argument unless the Court orders otherwise; and the Court further

**ORDERS** that the Clerk of the Court shall serve a copy of this Order on Plaintiff by regular mail.

**IT IS SO ORDERED.**

Dated: April 16, 2007  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge